

From: [Jamie Phillippe](#)
To: [Schaub, Mike](#)
Subject: RE: UAA question
Date: Thursday, March 5, 2020 8:56:37 AM

Thank you Mike! We're on the same page. I also appreciate the clarification on sub-category 101(a)(2)uses.

It's kind of looking like some portions of WQ097 will be republished, due to rephrasing; it's up to the Legislative Office to decide. I'll pass it by you, after internal review and before publication. GRN and LCA both submitted useful recommendations that I believe will improve the water regs.

From: Schaub, Mike <Schaub.Mike@epa.gov>
Sent: Wednesday, March 4, 2020 3:01 PM
To: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Subject: RE: UAA question

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Hi Jamie,

To answer your first question, I took a look back at what I could find on the original adoption of, and EPA's action on, naturally dystrophic waters provisions in the LA's WQS. Sadly, I couldn't find anything specific other than a 2008 briefing paper that indicated that EPA took "no action" on these provisions as submitted by LDEQ in September 2003. So, I'm not entirely sure that provisions on NDWs in the LA WQS were ever approved. And I've found nothing on classifications of intermittent streams and man-made waterbodies either. All that being said, I'm not sure they really fall under the heading of a WQS that would require EPA's approval anyway - they appear to simply be descriptors of classes of water types, and not designated uses (with accompanying criteria) that must be protected. While they are described in the definitions of LAWQS as 'excepted uses' (which, again, refers to classes of waters that are binned by the type of naturally occurring condition or a permanent physical limitation), I see no reference to them as designated uses (or a designated use subcategory) in Section 1111, other than that such waters may qualify for designation with a limited aquatic life and wildlife use (which IS a designated subcategory of a use). So, I think our position is that these are not subcategories of a 101(a)(2) use, or other non-101(a)(2) uses. As such, to answer your second question, such a canal would not be assigned a "man-made waterbody" designated use, but rather only one or more of those uses spelled out in Section 1111 – although it could be classified or described as a man-made waterbody so as to properly describe its status/origin, as is the case for a few waters in the footnotes of Table 3. And, if said criteria assigned to that canal were made equal to or more stringent than existing criteria already applicable to the uses assigned to that waterbody, no UAA would be required.

As a side note: one thing that Russell always reminds me is that the analysis done to justify less stringent criteria without a revision/removal of a standing 101(a)(2) use, is not really a UAA. If criteria are changed and the use is staying the same, we don't call it a UAA, it becomes a "criteria

revision study” or “criteria assessment” or something similar. Frankly, I don’t think there’s a standard term for it, it’s simply documentation of evidence indicating that less stringent criteria will still protect the current use(s). But the term “UAA” has a specific regulatory meaning. This being said, a slight revision to the provision cited by LCA could be made as follows (in yellow) to make this distinction:

“A use attainability analysis shall be conducted to justify a water body exception classification if an accompanying downgrade of a 101(a)(2) use ~~or~~ **and** ~~revision of application of less stringent~~ criteria is being proposed. **In the absence of a downgrade of a 101(a)(2) use, the application of less stringent criteria than existing criteria will require a criteria revision study.**” (could also use the term “criteria assessment”)

I do think that LCA is correct in making the distinction that a UAA would not be needed simply because there has been a “revision of criteria” – language clarifying the type of revision (to less stringent criteria) is useful here.

Let me know if I’ve adequately muddled the water here for you!

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From: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Sent: Tuesday, March 3, 2020 3:28 PM
To: Schaub, Mike <Schaub.Mike@epa.gov>
Subject: UAA question

Mike,

I’ve got another on for you, this time regarding when UAA’s are required. It’s related to a comment for WQ097 and I believe the request was not adequately worded/cited. This is in reference to LCA’s comment #4 and I’m trying to make sure my of reasoning is correct prior to responding.

Situations where a UAA are not required are listed at 40 CFR 131.10(k). Subpart (2) indicates a UAA is not required when a sub-category of section 101(a)(2) uses require “criteria at least as stringent as previously applicable.”

<https://www.law.cornell.edu/cfr/text/40/131.10>

First, are the water body exception classifications (intermittent, man-made, and naturally dystrophic at LAC 33:IX.1109.C) technically sub-categories of section 101(a)(2)?

Next, for example, if an existing canal were to be designated a man-made waterbody and its criteria were made equal to or more stringent than existing criteria, would a UAA be required?

I believe the citation in the comment is correct in reference to their recommended phrasing for LAC 33:IX.1109.C, but the substance of the comment is unrelated.

Thanks,
Jamie